

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the reasons that follow.

A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

Claims 1-20 were and remain pending in this application.

Applicant acknowledges with appreciation the indication in the Office Action that claims 4-17 contain allowable subject matter and would be allowable if rewritten in independent form. In view of the allowability of the independent claims of the present application, as discussed herein, Applicant believes that the claims are allowable in their present form.

In the Office Action, claims 3 and 18-20 remains rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by Kurz et al. (U.S. Patent No. 6,226,593). In view of the comments made in Applicant's reply of July 23, 2003, which are incorporated herein by reference, and in further view of the comments made herein, this rejection is respectfully overcome.

The Office Action alleges that Kurz discloses "monitoring the brake torque applied to the vehicle" and "modifying the brake signal based on the monitored brake torque after determination that the operator braking action is imminent" (language from independent claims in quotations). Applicant has carefully examined how the term "braking torque" is used in the specification of Kurz to determine whether the braking torque is monitored.

In the specification of Kurz, the term "braking torque" is referred to at sixteen (16) locations. The term "braking torque" is used in the manner described below. As will be readily understood, Kurz does not monitor braking torque and does not cause the braking torque to modify the setting signal (see column 3, lines 20-24).

1. "... both the **braking torque** ... and the engine torque ... are set to values greater than zero ..." (see column 1, lines 7-9).
2. "Because both a **braking torque** and an engine torque act on the vehicle ..." (see column 2, lines 1-2).
3. "reaction times ... to changes in the **braking** and/or engine **torques** are limited to a minimum value ..." (see column 2, lines 2-4).
4. "relationship between the **braking torque** and the engine torque reverses." (see column 2, lines 11-12).
5. "The reversal of the relationship between the **braking torque** and the engine torque can be achieved ..." (see column 2, lines 14-16).
6. "The reversal of the relationship ... can be achieved by either increasing the **braking torque** or reducing the engine torque ..." (see column 2, lines 14-17).
7. "... because both components are already acted upon by **braking torque** and engine torque" (see column 2, lines 27-28).
8. "..., the braking torque and the engine torque are adjusted" (see column 2, lines 43-44).
9. "Setting signals are then generated ... and these signals influence both the engine torque, by means of the engine management system, and the **braking torque**, by means of the brake actuation device ..." (see column 3, lines 20-24).
10. "... both torques being adjusted to a value greater than zero but with the **braking torque** at a smaller value than the engine torque." (see column 3, lines 24-26).
11. "... both the **braking torque** Mar and the engine torque adopt a value greater than zero" (see column 4, lines 18-21).

12. "Depending on the initial values of the engine torque and the **braking torque**, both torques can be reduced ..." (see column 4, lines 22-23).
13. "Because the engine torque M_M exceeds the **braking torque** M_{Br} , ..." (see column 4, lines 24-25).
14. "After adjustment of **torques** acting on the vehicle, the distance is checked ..." (see column 4, lines 32-33).
15. "If the distance ..., the **braking torque** M_{Br} and the engine torque M_M are increased, ..." (see column 4, line 47-48).
16. "... in such an extent that the braking torque M_{Br} exceeds the engine torque M_M ..." (see column 4, lines 49-51).

From the preceding list of cited portions where the term "braking torque" appears, it is clear that Kurz teaches that the setting signal influences both the engine torque and the braking torque (see column 3, lines 20-24). It is also clear that Kurz does not refer to monitoring the braking torque. It is further clear that Kurz does not teach modifying the setting signal based on the monitored braking torque.

Applicant submits that Kurz fails to disclose, teach or suggest monitoring the braking torque applied to the vehicle and modifying the brake signal based on the monitored braking torque as claimed.

Also in the Office Action, claim 1 is rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Minowa et al. (U.S. Patent No. 5,752,214). Claim 2 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Minowa et al. in view of Hiwatashi (U.S. Patent No. 6,056,374). For at least the following reasons, these rejections have been overcome.

The Office Action asserts that Minowa et al. discloses a braking torque threshold by referring to column 2, lines 14-40. Minowa et al. determines a target braking torque, determines a control input of a brake in accordance with

the target braking torque and controls the brake in response to the determined control input (see e.g., column 14, lines 1-11), whereby the brake is expected to apply the target braking torque. Minowa et al., however, fails to disclose, teach or suggest monitoring the braking torque applied to the vehicle, establishing at least one braking torque threshold, comparing the monitored braking torque with the established braking torque threshold, and modifying the brake signal in response to the comparing the monitored braking torque with the established braking torque threshold. Accordingly, Minowa et al. fails to anticipate the claimed invention recited in claim 1 and fails to render obvious the invention recited in claim 2. In view of the foregoing, Applicant respectfully requests reconsideration and withdrawal of these rejections.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. § 1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date JANUARY 6, 2004

By 
Reg. No. 41514

FOLEY & LARDNER
Washington Harbour
3000 K Street, N.W., Suite 500
Washington, D.C. 20007-5143
Telephone: (202) 672-5414
Facsimile: (202) 672-5399

Richard L. Schwaab
Attorney for Applicant
Registration No. 25,479